

EXHIBIT B

(Part 2)

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1 THE WITNESS: Yes, Judge.

2 MR. DEMARTINI: And I think we'll have
3 a stipulation as to the buck sheets.

4 MR. BARKET: Yes, Judge. I think
5 we'll stipulate to the facts that he was
6 offered two to four before indictment. He was
7 indicted. The minimum offer then was six to
8 life. Then he was indicted again and the law
9 speaks for itself. The minimum was fourteen
10 to life and he spoke to Mr. Vecchione.

11 MR. DEMARTINI: I think at some point
12 we'll put in both buck sheets.

13 MS. DONHAUSER: We'll have to review
14 that. I don't know --

15 MR. DEMARTINI: The first one shows
16 the criminal court --

17 MS. DONHAUSER: -- the last part --

18 MR. DEMARTINI: -- history, where the
19 two to four offer is made and then the
20 subsequent offers on the supreme court buck
21 sheets.

22 Q. Now in preparing for the actual trial,
23 People v. Cabeza and Marshall, as Arnold
24 Stober a witness in that case?

25 A. Yes.

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1 Q. And had you entered into a cooperation
2 agreement with Arnold Stober?

3 A. Yes.

4 MR. BARKET: Judge, to save time, I'll
5 stipulate that the other agreements were -- if
6 that's where you're going, I'll stipulate the
7 other agreements were turned over.

8 MR. DEMARTINI: Your Honor, I would
9 ask that they be marked as Government Exhibits
10 4 and 5.

11 (Government's Exhibit 4 and 5 marked for
12 identification)

13 Q. Did you also have an agreement with
14 Mr. Arnold Stober's brother, John Stober?

15 A. Yes.

16 Q. And was he also a witness against
17 Cabeza and Marshall?

18 A. Yes.

19 Q. I would show you 4 and 5. Are those
20 -- do you recognize those two agreements?

21 A. Yes.

22 Q. And were those turned over to
23 Mr. Harrison and Mr. London, the two attorneys
24 on the Cabeza and Marshall trial?

25 A. Yes.

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1 Q. Did you have a witness -- and did
2 these two individuals testify on the direct
3 case?

4 A. Yes.

5 Q. Was there a witness by the name of
6 Raymond Rivera who testified on the direct
7 case?

8 A. Yes.

9 Q. What was his significance in the
10 Marshall-Cabeza trial?

11 A. He was one of the witnesses who was
12 outside the store and saw -- I believe saw
13 them leaving the store.

14 Q. Was he able to identify him --
15 actually make an identification of Mr.
16 Marshall?

17 A. I think he was; yes.

18 Q. Were any promises made to him?

19 A. There were -- I believe that he was in
20 jail already. I think I indicated that I
21 would write some sort of letter on his behalf.
22 I think I was going to move his family and
23 there may have been something else but I don't
24 recall.

25 MR. DEMARTINI: I would ask that the

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1 following be marked as Government Exhibit 6.
2 (Government's Exhibit 6 marked for
3 identification)

4 Q. Mr. Vecchione, do you recognize
5 Government Exhibit 6?

6 A. Yes, I do.

7 Q. And what is it?

8 A. These are my notes as to what I was
9 going to do on behalf of Raymond Rivera and I
10 know that --

11 Q. And what did you indicate that you
12 were going to do?

13 A. A letter for work release, because I
14 believe he was in jail already, move him, for
15 his safety, once he got out and move his
16 family for safety. And I have written on here
17 Giglio, which means that I would have put it
18 in the folder that I would have turned over to
19 the defense attorneys with regard to material
20 that would fall under Giglio.

21 MR. DEMARTINI: And I would mark the
22 following as Government Exhibit 7.
23 (Government's Exhibit 7 marked for
24 identification)

25 Q. Mr. Vecchione, do you recognize what's

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1 been marked Government Exhibit 7?

2 A. Yes.

3 Q. And what do you recognize that to be?

4 A. This is a receipt that I prepared for
5 Mr. Harrison when I turned over Rosario
6 material, criminal records of various
7 witnesses in the case, and Giglio material
8 with regard to Arnold Stober, John Stober and
9 Raymond Rivera.

10 And the second sheet is also a
11 receipt. It's dated two days later. At that
12 point, I provided Mr. Harrison with two more
13 pieces of Rosario material and criminal
14 records of one of the victims in the case and
15 Arnold Stober.

16 MR. BARKET: What number is that?

17 THE WITNESS: 7.

18 Q. As you got closer to the trial, did
19 you prepare yourself and ultimately for the
20 Court, a witness list or witness lists of the
21 people that you intended to call at trial?

22 A. I believe that we did. I don't know
23 that I physically wrote it but I think that we
24 -- I know we did. I think it might have been
25 Sean Courtney who wrote -- actually wrote out

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1 the witness list.

2 Q. And when you were doing this, was
3 Mr. Murphy on your witness list?

4 A. No.

5 MR. DEMARTINI: And I would ask that
6 the following be marked as Government Exhibits
7 8-A, B, and C.
8 (Government's Exhibit 8-A, B and C marked for
9 identification)

10 Q. Do you recognize A, B and C, number 8-
11 A, 8-B and 8-C?

12 A. A is what appears to be the witness
13 list. B is a potential witness list, which I
14 wrote out. A, I did not write. And C, it
15 says witnesses and it appears as if these are
16 the witnesses that we were intending to call.
17 And I did not write C either.

18 Q. Now in any of those lists does the
19 name of Cisco Murphy appear?

20 A. No.

21 Q. When did you ultimately decide that
22 you were going to use Murphy as a witness in a
23 case?

24 A. On the 17th, after I spoke to him in
25 the -- in that little room on the fourth

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1 floor.

2 THE COURT: You just -- so help me.
3 Was this when -- this was just before he was
4 called?

5 THE WITNESS: Yes, sir.

6 THE COURT: But you had brought -- I
7 assume you had brought him over with the
8 notion --

9 THE WITNESS: I was hoping that he
10 would --

11 THE COURT: That he would --

12 THE WITNESS: -- remember and that he
13 would testify.

14 THE COURT: So, you -- I mean,
15 basically, you had just -- you had made the
16 decision, essentially, to use him subject to
17 your, you know, having comfort as to what he
18 would say at some earlier point.

19 THE WITNESS: Yes, absolutely.

20 Q. Now is it fair to say that on March 11
21 and March 12, 1993 while the trial was
22 progressing, that would be the Thursday and
23 Friday before the following Wednesday when
24 Murphy testifies, that you were busy with your
25 direct case?

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1 A. Yes.

2 Q. And in your case, Mr. Murphy testified
3 solely as a rebuttal witness.

4 Is that correct?

5 A. Yes.

6 Q. On the subsequent case --

7 A. Excuse me.

8 Q. -- after he signed his cooperation
9 agreement, was he a primary witness in the
10 first and second trials that Mr. Hollman
11 testified --

12 A. I believe so; yes.

13 Q. -- excuse me, tried?

14 A. Yes.

15 THE COURT: Could you refresh my
16 recollection?

17 THE WITNESS: Yes, sir.

18 THE COURT: I looked at the transcript
19 before when the case was reassigned to me and
20 we had a hearing -- oral argument and I
21 decided that I needed to have an evidentiary
22 hearing.

23 THE WITNESS: Yes, sir.

24 THE COURT: So, what I don't remember
25 from the transcript, did anybody ask, either

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1 you or Mr. Harrison, ask Ciscro Murphy what he
2 faced, what his exposure was on the pending
3 charges? Do you recall?

4 THE WITNESS: I don't recall. I don't
5 think so but I don't recall it. I don't
6 recall with 100 percent certainty, Judge.

7 MR. BARKET: In the Cabeza trial,
8 Judge?

9 THE COURT: Yes.

10 MR. BARKET: No.

11 MS. DONHAUSER: What's the question
12 again because I have -- whether anybody asks
13 whether he could be, like, a mandatory
14 persistent or something?

15 THE COURT: What penalty do you face
16 on these charges, which is the traditional
17 question that one would ask of a cooperating
18 witness who you knew had pending charges.

19 MR. BARKET: No.

20 MS. DONHAUSER: I believe -- well, I
21 think actually Harrison --

22 MR. BARKET: He doesn't ask him about
23 the penalties. I'll take a look. I could be
24 wrong.

25 MS. DONHAUSER: Okay. We can continue

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1 and I'll look.

2 THE COURT: Yes, that's okay.

3 BY MR. DEMARTINI:

4 Q. At the conclusion of the Cabeza and
5 Marshall trial, did you speak with the jurors?

6 A. No.

7 Q. So you don't have any direct
8 information from any of the jurors as to why
9 they came to the verdict that they came to?

10 A. No. I mean, yes, I do not have --

11 Q. Okay.

12 Well, but you wrote a letter to the
13 parole board, so you must have had an opinion.

14 THE WITNESS: That wasn't the
15 question, Judge. It was what -- the question
16 was --

17 Q. Did you have any firsthand information
18 from any of the jurors as to how they came
19 about with their verdicts and the Cabeza and
20 Marshall trial?

21 A. No.

22 Q. So your letter to the parole board was
23 not based upon any information you got from
24 jurors?

25 A. No.

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1 MS. DONHAUSER: Judge, I have an
2 answer to your question. It was very brief.
3 Mr. Harrison asked:

4 "Question: If you were convicted,"
5 meaning of the cases -- of the open cases,
6 "would you become a predicate felon?

7 "Answer: That's if I was convicted.

8 "Question: Yes, if --

9 "Answer: Yes."

10 But there's no discussion of the exact
11 number of years he could receive.

12 BY MR. DEMARTINI:

13 Q. I would show you what has been
14 previously marked as the Petitioner's Exhibit
15 10.

16 A. Yes.

17 Q. Both sides of that top page.

18 A. Yes.

19 Q. Is that your handwriting on either of
20 the two pages?

21 A. No.

22 Q. Do you recognize the handwriting?

23 A. No, I don't.

24 Q. Looking at those two pages, does it
25 indicate that you had information or someone

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1 in your trial cadre gathered information about
2 both the gun case that Ciscro Murphy had
3 pending and the rape case?

4 A. Yes.

5 Q. Looking at that, would you be able to
6 conclude whether or not at some point you had
7 in your possession both the gun case and the
8 rape case?

9 A. Yes.

10 Q. Excuse me, what was your response?

11 A. I'm sorry, say that -- ask the
12 question again. I was reading.

13 Q. Looking at those two pages of notes,
14 would that allow you to tell us whether or not
15 you had in your possession at some time before
16 you went to trial on the Cabeza and Marshall
17 case, whether or not you had both Mr. Murphy's
18 gun case that was pending and his rape case
19 that was pending?

20 A. Yes.

21 Q. The files in both cases?

22 A. Yes.

23 Q. And is it your answer that you had
24 both of them?

25 A. At some point, we had both of them;

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1 yes.

2 Q. I believe you said you tried the
3 Cabeza case with a co-counsel.

4 A. Yes.

5 Q. And that was who?

6 A. Sean Courtney.

7 MR. DEMARTINI: I would mark the
8 following as Government Exhibit 9, I believe
9 we're up to.
10 (Government's Exhibit 9 marked for
11 identification)

12 MR. BARKET: You're doing numbers,
13 also?

14 MR. DEMARTINI: Yes.

15 MR. BARKET: Okay.

16 Q. Do you recognize that note?

17 A. Yes.

18 Q. And in whose handwriting is that note?

19 A. Sean Courtney.

20 Q. What does that refer to?

21 A. This is a note that was given to an
22 assistant; it appears as if an assistant from
23 the orange zone and it refers to -- excuse me,
24 neither he nor I having spoken to a deputy
25 chief in the sex crimes bureau with regard to

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1 Murphy's pending sex crimes case to make a
2 package offer; the gun and the sex crimes
3 case.

4 Q. And when is that date?

5 A. April 19.

6 Q. And that would be April 19 of what
7 year?

8 A. '93.

9 Q. And does it make any reference to the
10 deputy that you would be speaking to in the
11 sex crimes unit?

12 A. Yes, it says Melendez and I know that
13 to be Suzanne Melendez.

14 Q. She was a deputy in the sex crimes
15 unit at the time?

16 A. Yes.

17 Q. Now, the two pending cases that Murphy
18 had, the gun case and the sex crime or the
19 rape case, were either of those two cases
20 cases that would have been assigned to your
21 trial cadre?

22 A. No.

23 Q. Where was the sex crimes case?

24 A. In the sex crimes bureau.

25 Q. And what about the gun case? Where

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1 was that being handled?

2 A. It was in the orange zone, which is
3 one of the five trial bureaus that handles
4 supreme court cases.

5 MR. DEMARTINI: Your Honor, at this
6 time I would like to have -- what I have done,
7 it's the complete outside folders of those two
8 cases with their notations. We have also
9 xeroxed it. So, we can -- I'll show it to
10 Mr. Barket. He can check that it is a correct
11 xerox.

12 MR. BARKET: I'm sure they copied what
13 was there, Judge.

14 THE COURT: Okay.
15 (Government's Exhibits 10 and 11 marked for
16 identification)

17 Q. I'll show you what's been marked as
18 Government Exhibits 10 and 11, these -- 10 and
19 11 being xerox copies of these two folders.

20 If you would look -- what are those
21 folders? Can you tell us what the folders
22 are?

23 A. These are the supreme court -- these
24 are the felony folders that we were using
25 back, I guess, 1992, 1993 until we changed the

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1 outside of the folder to include color coding
2 for each of the zones.

3 Q. And in particular, what cases do those
4 two folders refer to?

5 A. Ciscro Murphy, Ciscro Murphy; both
6 Ciscro Murphy.

7 Q. And would one be his gun case and the
8 other be the sex crimes case; the rape case?

9 A. Yes.

10 Q. Referring to the folder that's
11 indictment 1365/93, if you could look at the
12 page that represents the inside flap.

13 A. Yes.

14 Q. Is there a note that is dated April
15 22, 1993?

16 A. Yes.

17 Q. And what does that note state?

18 A. It says, "Spoke to M. Vecchione. Okay
19 to give better plea offer. Defendant helped
20 M. Vecchione." I can't read the last word or
21 two. And it says -- and it's initially SM.

22 Q. Now, do you know some -- who would be
23 SM at that time in the sex crimes bureau?

24 A. Suzanne Melendez.

25 Q. And the date again is?

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1 A. April 22.

2 Q. And that would be before or after you
3 completed the trial in Cabeza and Marshall?

4 A. After.

5 MR. DEMARTINI: The rest of it
6 certainly speaks for itself and we'll direct
7 our arguments to it.

8 Q. Now with respect to our file on the
9 sex crimes case --

10 A. That's 12156?

11 Q. That's correct.

12 MS. DONHAUSER: No.

13 MR. BARKET: No.

14 THE WITNESS: No?

15 Q. 1 -- I think it's the --

16 A. Oh, it's 1365.

17 Q. 1365.

18 A. Yes.

19 Q. Of '93.

20 A. Okay.

21 THE COURT: With respect to what case?

22 MR. DEMARTINI: The sex crimes case.

23 THE COURT: Okay.

24 Q. Does the file indicate when Mr. Murphy
25 was first arraigned on that case? I'm talking

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1 about the criminal court arraignment, would
2 that appear on that folder?

3 A. It doesn't appear --

4 MR. BARKET: Can't we just stipulate
5 the date? I think it was January 27.

6 MR. DEMARTINI: That he was arraigned
7 on January 27 --

8 MR. BARKET: 27, I believe.

9 MR. DEMARTINI: -- 1993.

10 MR. BARKET: It's a matter of record.

11 Q. I would show you the following rap
12 sheet. On the top of the rap sheet, does it
13 indicate when it's generated?

14 A. It's very hard to read. It looks like
15 1.

16 MR. BARKET: Judge, I'll stipulate
17 that the rap sheet was generated at the time
18 of the arraignment on that charge.

19 Q. And is that --

20 MR. BARKET: Whenever it was.

21 Q. Does the rap sheet that would be
22 associated with that case contain or indicate
23 that there are two open cases at that point in
24 time for Mr. Murphy; namely, that rape case
25 and the gun case?

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1 A. Yes.

2 Q. Now you mentioned in, I believe, in
3 answering one of Mr. Barket's questions
4 concerning the letter that an Assistant
5 District Attorney Ralph Pasarero wrote. He
6 was in Nassau County and he wrote a letter to
7 Mr. Hollman and eventually you got that
8 letter.

9 How did you go about answering his
10 letter? What did you look at before you
11 answered his letter?

12 A. The Cabeza file.

13 Q. When you say the Cabeza file, is that
14 the trial folder or boxes that contain the
15 trial folders for People v. Cabeza and
16 Marshall case?

17 A. Yes.

18 Q. Did you pull the files for Marshall's
19 other two cases?

20 A. No, I believe that they were already
21 acquittals in those cases and those files were
22 sealed.

23 Q. Did you pull Cisco Murphy's files?

24 A. No.

25 Q. Now, when the plea agreement was

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1 entered into with Mr. Murphy, do you remember
2 when that plea agreement actually was signed?

3 A. If you showed me, I would be able to
4 hopefully refresh my memory.

5 MR. BARKET: We'll stipulate it was
6 signed by Mr. Murphy on August 13.

7 MR. DEMARTINI: I think you have it --
8 you put it into evidence.

9 MR. BARKET: It already is in.

10 MR. DEMARTINI: Yes.

11 MR. BARKET: It's in.

12 MS. DONHAUSER: Yes.

13 MR. BARKET: It's dated July 7. It
14 was signed off --

15 MR. DEMARTINI: And I showed it --

16 MS. DONHAUSER: We have copies? We
17 would like to show him copies?

18 MR. BARKET: No, I have it. It was
19 dated January --

20 THE COURT: No, he's just asking you
21 for the --

22 MR. DEMARTINI: Can I see that --

23 MR. BARKET: Oh, I am sorry.

24 MR. DEMARTINI: -- have that piece of
25 evidence to show the witness?

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1 MR. BARKET: Sure, one second.

2 MR. DEMARTINI: And I have another --

3 MR. BARKET: Yes, show him the other
4 copy. I mean, there's no dispute about what
5 it says.

6 MS. DONHAUSER: Paul?

7 MR. DEMARTINI: Yes.

8 MS. DONHAUSER: Here's an extra copy
9 for you.

10 BY MR. DEMARTINI:

11 Q. Yes.

12 A. Are you asking what date it was
13 signed?

14 Q. Yes, by Mr. Murphy and his attorney.

15 A. August 13, 1993.

16 Q. And was that also the date that
17 Mr. Murphy took his plea of two to life?

18 MR. BARKET: We have the minutes that
19 are in evidence, Judge, yes.

20 THE COURT: All right. He's
21 stipulating that it was.

22 MR. BARKET: I stipulated to it.

23 THE COURT: Let's go.

24 MR. BARKET: This is ridiculous. The
25 minutes are going to be part of the record.

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1 Q. Would you have sent the -- well,
2 looking at the folder for the gun case, does
3 it indicate that the agreement was signed in
4 court on that day?

5 A. Yes.

6 Q. Would you have sent over copies to the
7 orange zone? Well, first let me ask you, were
8 the assistant who stood up on August 13, 1993
9 when Mr. Murphy pled guilty in Judge
10 Goldberg's part 31?

11 A. No.

12 Q. Would it have been an assistant from
13 the orange zone?

14 A. That's what it looks like. I can't
15 read the handwriting but it was not me.

16 Q. Now I believe Mr. Barket showed you a
17 note from the orange zone two days prior to
18 the -- strike that.

19 So you didn't take the plea.

20 A. No.

21 Q. Is that correct?

22 A. I did not.

23 Q. Would you have sent over the
24 cooperation agreements, which were ultimately
25 signed in court?

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1 A. Yes.

2 Q. Did you expect those cooperation
3 agreements, copies to then be placed in both
4 the Court file and our Cisco Murphy file?

5 A. Yes.

6 Q. Did you instruct anyone in the orange
7 zone when they took that plea to ask that the
8 file be sealed, so that no one could see the
9 cooperation agreement?

10 A. No.

11 Q. Do you know, in fact, if the file was
12 or wasn't sealed?

13 A. I don't -- I would have no reason to
14 have it sealed. There was no -- it was not
15 sealed, as far as I know.

16 Q. Now I believe you testified on direct
17 examination to one of Mr. Barket's questions
18 that when you interviewed Mr. Murphy that
19 first time he came in, other than this contact
20 information that appears on one of the
21 documents placed into evidence, you didn't
22 take any notes.

23 A. That's correct.

24 Q. Is there any reason -- is there a
25 reason why you didn't take notes?

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1 A. I don't ever take notes.

2 Q. Why?

3 A. Becuase I don't want the --

4 THE COURT: It creates impeachment
5 material.

6 THE WITNESS: Yes.

7 Q. Okay.

8 A. Right.

9 Q. That's clear, now let's get that on
10 the record.

11 THE COURT: I know. We all know.
12 Many, many prosecutors do but it's not unheard
13 of.

14 Q. When he was telling you his story and
15 what he testified to on rebuttal --

16 A. Yes.

17 Q. -- at the trial, was it a long,
18 complicated story?

19 A. No, it wasn't at all.

20 Q. It had basically boiled down to a
21 concocted alibi and he was angry at the
22 defendant for trying to have him associated
23 with a gun that Mr. Marshall owned.

24 A. In essence, yes, that's what it boiled
25 down to.

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1 Q. I believe the following -- I'll show
2 him the original -- you have a copy of the
3 letter that was sent --

4 MR. BARKET: I think I put it in
5 evidence.

6 MR. DEMARTINI: Yes, you put it into
7 evidence. I don't remember what number it is,
8 so I'll show the original.

9 Q. After you got through trying the
10 Cabeza-Marshall case --

11 A. Yes.

12 Q. -- did you receive some correspondence
13 from Mr. Murphy and in particular, that letter
14 that you're looking through now?

15 A. It's -- yes, I recall I did; yes.

16 Q. And it's dated when?

17 A. August 15, 1994.

18 Q. And if you could look at, I believe
19 it's page 3, does he make -- he, being
20 Mr. Murphy, any reference to his testimony in
21 the Marshall-Cabeza case?

22 A. Yes.

23 Q. In his reference in that letter, is
24 there any reference that he was made a promise
25 at that time?

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1 A. No.

2 Q. What does he say?

3 A. He says -- how much of the paragraph
4 do you want me to read?

5 Q. Just the paragraph that contains a
6 reference to the Cabeza case.

7 A. It says, "Mr. Vecchione, you're my
8 only hope. Things in here has gotten worse
9 concerning my situation and the prison
10 officials is trying to cover up everything
11 becuae they do not want to be a part of the
12 lawsuit. Remember when I was going to testify
13 against Born, a/k/a Jeffrey Marshall and
14 Robert Cabeza, and you stated to me, 'to go in
15 there and tell the Court what I know.' Do you
16 remember that? Well, for my reason -- my
17 reason for mentioning that is because I need
18 you to believe in me once more, to believe
19 that I will be able to live a law abiding life
20 and become a productive person within my new
21 community and society. In fact, I would be
22 willing to make myself available to your
23 office on a permanent basis or whenever needed
24 in an effort to show my appreciation."

25 Q. And, in fact, is that what you told

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1 him just prior to his testifying to go in
2 there and to tell the Court what he had told
3 you previously?

4 A. Yes, in so many words I did. I -- to
5 go in there and tell the Court what you know.

6 Q. So, at any time that you spoke to him
7 up to and including March 17, 1993, did you
8 ever make any promises to him?

9 A. No.

10 Q. Did he request any promises or
11 consideration for his testimony?

12 A. In that time frame?

13 Q. In that time frame.

14 A. No.

15 Q. And when you entered into the
16 cooperation agreement, was that based on
17 additional information that he was now giving
18 you concerning Mr. Marshall?

19 A. Yes.

20 Q. And that would be information that
21 related to the second and third homicide
22 trials?

23 A. Yes.

24 Q. Just one second.

25 One last thing, the rap sheet that you

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1 looked at that contained -- that mentions both
2 open cases for Mr. Murphy --

3 A. Yes.

4 Q. -- the gun case and the rape case, was
5 that rap sheet in the sex crimes folder that
6 you pulled or had pulled from the sex crimes
7 unit?

8 A. It would -- I would assume so, since
9 it had the rape arrest on here.

10 Q. And did you have that case folder
11 before you went to trial with Mr. Cabeza and
12 Mr. Marshall?

13 A. Yes.

14 Q. So, is it your testimony that the rap
15 sheet that you handed or actually there were
16 two rap sheets that you handed to Mr. Harrison
17 at that trial, were rap sheets that contained
18 both cases?

19 A. Yes.

20 Q. And, in fact, were there questions of
21 Mr. Murphy that concerned both cases?

22 A. Yes.

23 Q. When you turned over the last two
24 cases to Mr. Hollman, the second and third
25 Marshall homicides, do you remember telling

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1 Mr. Hollman that Mr. Murphy was a cooperating
2 witness?

3 A. Yes.

4 Q. And do you know if Mr. Hollman pulled
5 the files of Mr. Murphy?

6 A. I don't know what he did.

7 Q. Did you have any follow up -- after
8 you gave the cases to him, did you have --
9 well, did you speak to him initially when you
10 gave him the cases?

11 A. Yes.

12 Q. Did you have any follow up
13 conversations from the time that you had that
14 initial conversation when you transferred the
15 cases over to him until he tried the cases?

16 A. I'm sure I did. I don't recall any --
17 I don't recall what the content but I am sure
18 I did. He must have --

19 Q. Did he come to you asking you about
20 the cases?

21 A. I'm sure he did.

22 Q. Do you remember if he asked you about
23 any cooperation agreement with Mr. Murphy?

24 A. Specifically, I don't recall. You
25 know, I would have told him that there were

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1 cooperation agreements. He would not have
2 even known the existence of Mr. Murphy if had
3 it not been for me because Mr. Murphy doesn't
4 appear on any of the documents in the file
5 except for the cooperation agreement. I mean,
6 he was not -- those cases have already been
7 indicted. Murphy didn't testify in the grand
8 jury. He wasn't on any DD-5's. He wasn't on
9 any documents.

10 So, in order for Mr. Hollman to know
11 about Mr. Murphy, I would have been the one to
12 tell him.

13 MR. DEMARTINI: Judge, I have no
14 further questions.

15 MR. BARKET: I have no --

16 THE COURT: I may have misheard. At
17 the time -- when did he testify in the grand
18 jury in the subsequent two cases?

19 THE WITNESS: Who is that, Judge?

20 THE COURT: Cisco Murphy.

21 THE WITNESS: He did not.

22 THE COURT: He did not testify.

23 THE WITNESS: No, that's my point.

24 THE COURT: Okay.

25 THE WITNESS: He did not.

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1 MR. BARKET: Could I ask a few more
2 questions, Judge?

3 THE COURT: Of course.

4 REDIRECT EXAMINATION

5 BY MR. BARKET:

6 Q. Could you take a look at the letter,
7 which I think has been marked as --

8 A. This letter, the --

9 Q. Yes, the letter that Mr. Murphy sent
10 to you. I believe it's marked as Petitioner's
11 3.

12 THE COURT: Before he testified at the
13 first trial, the one that's at issue here, had
14 there been any discussion about him testifying
15 in any other trials?

16 THE WITNESS: No, Judge.

17 MR. BARKET: I'm sorry, Judge, I
18 didn't hear your question.

19 THE COURT: I asked whether before he
20 testified against Mr. Marshall at the trial
21 that at's issue here whether he had agreed to
22 testify in any of the other cases and the
23 answer was no.

24 Q. Petitioner's 3, could you read for the
25 Court the first two sentences, please?

Vecchione - Redirect - Barket

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1 A. "Dear Mr. Vecchione, I hope my letter
2 find you doing well. I am writing to you
3 because I know that you are a fair man and a
4 man of your word."

5 Q. So, he's obviously, in writing this
6 letter, referring back to some statement you
7 had made to him where he says you're a man of
8 your word; right?

9 A. I can't tell you what was in his mind.

10 Q. Well, what does he ultimately ask you
11 to do here? Take a look at page 4 and read
12 the first sentence on page 4.

13 MS. DONHAUSER: I'm sorry, which --
14 what's the date on that letter?

15 MR. BARKET: It's the letter that --

16 MS. DONHAUSER: The same one?

17 MR. BARKET: Yes.

18 THE WITNESS: August 15. What are you
19 asking me now, Mr. Barket?

20 BY MR. BARKET:

21 Q. Read the first sentence of page 4.

22 A. "Mr. Vecchione, I need your help. I
23 need you to contact Mr. James Ricor (phonetic)
24 in Albany, New York. He is the director of
25 the temporary release program. His phone

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1 number is (518 457-2655."

2 Q. And --

3 A. "I need you to -- "

4 Q. Sorry.

5 A. Do you want me to --

6 Q. Go ahead. Read the next sentence.

7 A. "I need you to explain my situation
8 and to ask him to let me participate in the
9 work release program."

10 Q. Thank you.

11 Now you indicated --

12 THE COURT: Well, other than what's in
13 the agreement, did you make him any other
14 promises, Murphy?

15 THE WITNESS: No, sir.

16 THE COURT: -- about writing to parole
17 boards?

18 THE WITNESS: No, sir, whatever is in
19 the agreement is what I agreed to.

20 THE COURT: And does the agreement
21 refer to letters to the parole board?

22 MR. BARKET: The cooperation
23 agreement?

24 THE COURT: Yes.

25 MR. BARKET: No, Judge, I think it's

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1 limited to the two to life.

2 BY MR. BARKET:

3 Q. With respect to -- do you still have
4 up there the file that, "Spoke to M.
5 Vecchione, okay to give better plea offer,
6 defendant helped Mr. Vecchione in the trial?"

7 Do you have that notation?

8 A. On the flap?

9 Q. Right.

10 A. Yes.

11 Q. On the --

12 A. Spoke to -- yes.

13 Q. Under confidential notes.

14 A. Yes.

15 Q. Is that right?

16 A. Yes.

17 Q. And it says -- does that help you,
18 "The defendant helped Mr. Vecchione in trial?"
19 Is that the last two words?

20 A. Your guess is as good as mine. I
21 guess that's what it means. I don't -- you
22 know, I don't know.

23 Q. It actually did help you in the trial;
24 right?

25 A. Well, of course, he testified.

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1 MR. BARKET: And could I have the
2 original of this, please?

3 MS. DONHAUSER: Which one?

4 MR. BARKET: Could I have the original
5 of that?

6 Q. Did you testify before that the deal
7 that you gave Mr. Murphy had nothing to do
8 with his testimony for Cabeza, that the deal
9 was prospective in that it was for him to
10 testify in the next two trials?

11 A. I had no deal with Mr. Murphy with
12 regard to the Cabeza case.

13 THE COURT: I think what we --

14 MS. DONHAUSER: I don't think I have
15 the original of this.

16 THE COURT: I think what you were
17 talking about is, I mean, is what the
18 agreement references.

19 MS. DONHAUSER: I can tell you what it
20 looks like. It's this big. That's in red.
21 The rest is in (inaudible). I don't have
22 any --

23 MR. BARKET: I'm sorry, Judge?

24 THE COURT: I think what we're talking
25 about and there was some confusion.

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1 Ms. Donhauser started giving me numbers but --
2 of indictments, but the question was whether
3 the plea agreement actually referenced the
4 first case.

5 THE WITNESS: It did not, only to the
6 extent -- it does, only to the extent that the
7 number that I put in -- when I say -- it reads
8 as follows, Judge and it's easier to read it.

9 "Under this agreement, Ciscro Murphy
10 will continue to make himself available to
11 representatives of the Kings County DA and to
12 meet with all -- with and at all times to
13 truthfully and completely disclose all
14 information, including context of
15 conversations that he possesses regarding the
16 criminal activities and the associations of
17 the following person; Jeffrey Marshall, also
18 known as Born or Marsh, who is currently
19 indicted under Kings County indictments
20 9490/92 and 12592/92."

21 So, the agreement was to the -- for
22 him to testify and to continue to give us
23 information with regard to the pending
24 indictments and this was signed after the
25 Cabeza case had been tried -- the first case

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1 had been tried.

2 MR. BARKET: May I continue, Judge?

3 THE COURT: Yes.

4 BY MR. BARKET:

5 Q. Now the that you --

6 THE COURT: Could I see the letter for
7 the moment?

8 THE WITNESS: Sure, Judge.

9 Q. The note that we just read here
10 indicates "4/23 spoke to Mike Vecchione. Okay
11 to give --"

12 THE COURT: Could you stop for a
13 minute?

14 MR. BARKET: I'm sorry.

15 (Pause in proceedings)

16 Q. That agreement was written on July 6;
17 correct?

18 A. Yes.

19 Q. On April -- the notes that we're
20 reading are April 22, 1993.

21 Is that correct?

22 A. It says April 22, 1993; right.

23 Q. So that -- and he testified on March
24 17.

25 Is that correct?

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1 A. Right.

2 Q. So within about six weeks of his
3 testimony, someone had spoken to you and you
4 had authorized the better deal for Mr. Murphy
5 on the rape charge because of his testimony
6 for you in the Cabeza trial.

7 Is that right?

8 A. No, what we were doing was I had
9 engaged in discussions with Mr. Fiol by that
10 point and we were giving him the deal based on
11 his testimony that was going to come up in the
12 other two trials.

13 Q. Well, the --

14 A. In fact, he had --

15 Q. -- note here says --

16 THE COURT: Let him finish. He'll
17 read the note.

18 A. In fact, he had testified for me, yes,
19 in the other case but that's -- and I'm sure I
20 informed -- I told Suzanne Melendez that he
21 did; yes.

22 Q. And it --

23 A. But the cooperation agreement was only
24 for the cases that were coming up, not the
25 case that he had already testified in.

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1 Q. Well, the note here, "Spoke to M.
2 Vecchione," that would be you; yes?

3 A. Yes.

4 Q. Okay.

5 "Okay to give better plea offer.
6 Defendant helped Michael Vecchione or M.
7 Vecchione at trial."

8 That's April 22.

9 A. It says, "Spoke to M. Vecchione. Then
10 it says okay to give better plea offer.
11 Defendant helped M. Vecchione" and those words
12 that I am not sure of but I'm sure it says --
13 that you're right; yes.

14 Q. Take a look at what I've marked as
15 Petitioner's 14.
16 (Petitioner's Exhibit 14 marked for
17 identification).

18 MR. BARKET: And I'm going to ask that
19 we have an understanding, that's a note that
20 was also in the rape file.

21 Is that correct?

22 MS. DONHAUSER: I have to check that.

23 Q. Do you see what I've highlighted there
24 in yellow?

25 A. I see what it says; yes.

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1 Q. Okay.

2 Could you read that to the Court,
3 please?

4 A. It says, "Mike Vecchione and Sean
5 Courtney want to deal this case and the gun
6 case."

7 Q. And what's the date up in the upper
8 right hand corner of that?

9 A. April 14.

10 Q. That's --

11 A. Is that the -- is this is what you're
12 referring to?

13 Q. Yes.

14 A. Okay.

15 Q. Now, you indicated that by looking at
16 the notes which were marked as number 10 --

17 MR. BARKET: Can I have those back
18 again?

19 MS. DONHAUSER: This?

20 MR. BARKET: Yes.

21 Q. -- marked as number 10, you can tell
22 from them that you can tell that both files
23 were requested by you and that you had both
24 files on the 17th of March.

25 Is that right?

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1 A. You've asked two questions. Which one
2 do you want me to answer?

3 MS. DONHAUSER: Does he have it on the
4 stand?

5 MR. BARKET: Do you still have the --
6 number 10 up there, the originals?

7 THE WITNESS: Yes.

8 MR. BARKET: Okay.

9 MS. DONHAUSER: Yes.

10 Q. Could you take a look at that?

11 A. Yeah, you asked me two questions.

12 Q. You were asked whether or not you had
13 the file and whether or not you could tell you
14 had the files from those notes.

15 A. It appears --

16 Q. And you said yes. Could you just
17 point to what you were referring to?

18 A. No, other than this note that says
19 that the assistant from the orange zone wants
20 the case folder back --

21 Q. That was --

22 A. -- I would --

23 Q. The case folder for the orange zone
24 back --

25 A. Can I finish my answer?

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1 Q. -- would be -- sure.

2 A. I would have had both files. Of
3 course, I would have. I would not have --

4 Q. Would --

5 A. -- done anything with Mr. Murphy
6 unless I had looked at both files; yes.

7 Q. You had a note from -- a note
8 specifically requesting the gun case and a
9 note requesting the gun case back; correct?

10 A. Yes.

11 Q. That's the note that you just referred
12 to that we're looking for that case back.

13 A. Yes.

14 Q. That was the case that was on P-31 on
15 the 17th; right, the gun case?

16 A. Part 31; yes.

17 Q. You also said that you could tell by
18 looking at those notes that you had both
19 files.

20 A. I can tell --

21 Q. Is there something in the notes --

22 A. No.

23 Q. -- that indicates that you had the
24 other file?

25 A. Nothing in the notes specifically,

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1 other than the fact that I would know that I
2 had -- I would get the cases.

3 Q. Right.

4 A. I mean, there --

5 Q. Actually, there is a reference to the
6 other case in the file, isn't there, on that
7 same pad; isn't there?

8 A. What were you -- what you asked me
9 about before?

10 Q. There's a reference to the second
11 case; isn't there?

12 A. Yes, there is.

13 Q. What does that say?

14 A. It says, "Complaining witness Lilly
15 Young never came forward. Complaining witness
16 Della not credible. Case was not indicted."

17 Q. So on the 17th of March, when you
18 claimed you had both files, we know that both
19 cases were indicted at that time; don't we?

20 A. Number one, you say -- you keep
21 prefacing by saying I had the two files on the
22 17th. I don't recall having the files in
23 court with me on the 17th. I don't know if I
24 did or not. You never asked me that.

25 Did I -- I have I looked at the files

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1 -- had I looked at the files prior to the
2 17th? The answer is yes, I did.

3 Q. Is there any notation in Jeffrey
4 Marshall's file that you've requested or
5 obtained the rape case?

6 A. In Jeffrey Marshall's file?

7 Q. Yes.

8 A. I have no idea.

9 Q. Is there any notation in any of those
10 files that you requested or obtained the rape
11 file?

12 A. The only reference to it is the note
13 that's in front of me, which indicates that
14 two of the complaining witnesses in that case
15 were -- one didn't come forward and one was
16 not credible.

17 So, the answer to your question is I
18 had the rape file and I examined it, at some
19 point prior to the 17th; yes.

20 Q. Okay.

21 And that also says the case was not
22 indicted; correct?

23 A. At that point, whenever these were
24 made -- whenever these notes were made, the
25 case had not been indicted according to this.

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1 Q. You --

2 A. I don't know if this is an accurate
3 note. I mean, I didn't make these notes. So,
4 I don't know if the case is accurate -- if
5 that's accurate.

6 Q. How did you find Cisco Murphy in
7 jail?

8 A. When?

9 Q. When you wanted him?

10 A. I presume, and I didn't find him, but
11 I presume my paralegal put his name in to the
12 computer and found -- and he was in jail.

13 Q. Isn't it correct that after he went
14 back to jail, Mr. Fiol and you entered into
15 negotiations for a deal and that you knew he was
16 in jail because Mr. Fiol told you?

17 A. I don't have any recollection of that
18 at all.

19 Q. Isn't it correct that as these
20 negotiations were going on, the reason why you
21 didn't put Murphy on the witness list is
22 because you never struck a deal with Fiol.

23 A. There were --

24 Q. Fiol wanted a misdemeanor and you
25 didn't want to give him a misdemeanor.

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1 A. Do you want me to answer the question
2 or you --

3 Q. Yes.

4 A. The answer to the question is there
5 were no negotiations going on between the time
6 Mr. Murphy came into my office and the time
7 that he testified. So your preface -- the
8 preface to your question was not -- is not
9 correct.

10 Q. So, your testimony now is that your
11 memory is Mr. Fiol never asked you for
12 anything?

13 A. I didn't say that. I said there were
14 no negotiations going on.

15 Q. Is that how --

16 A. My -- when I --

17 THE COURT: Are we talking about some
18 definition of negotiation or did you not have
19 any conversation? What's -- about -- I don't
20 want to get caught up in a --

21 THE WITNESS: Judge, I --

22 THE COURT: Did you have any
23 conversations with Mr. Fiol about --

24 THE WITNESS: I don't recall
25 Mr. Fiol --

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1 THE COURT: -- this issue.

2 THE WITNESS: I may -- I must have had
3 a conversation with Mr. Fiol to let him know
4 that his client had come into my office but I
5 don't have any recollection of any
6 negotiations taking place or Mr. Fiol asking
7 me for anything because I recall it was very
8 simple.

9 Mr. Murphy did not want anything.
10 There was no need to enter into any kind of
11 negotiations. He did not want anything. Now
12 is that amusing, Mr. Barket?

13 THE COURT: Did he say --

14 THE WITNESS: I don't understand.

15 THE COURT: Did he say that he didn't
16 want anything or is that just because he
17 didn't -- you're assuming that because he
18 didn't ask?

19 THE WITNESS: He absolutely,
20 positively said he did not want anything
21 because I asked him.

22 Q. And six weeks later, he's getting
23 better deals in the rape question and three
24 months later --

25 A. Six --

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1 Q. -- he's an agreement drafted.

2 A. -- weeks later -- is that a question
3 or are --

4 Q. Yes, if he didn't want anything except
5 right after he testified he got something.

6 THE COURT: Don't argue -- I told you
7 yesterday, there's no need for argumentative
8 questions. There is no jury --

9 MR. BARKET: I'm sorry, Judge.

10 THE COURT: -- present here.

11 MR. BARKET: Now --

12 THE COURT: You don't have to ask
13 leading questions.

14 MR. BARKET: I'll withdraw the
15 question.

16 Q. Now your testimony concerning the
17 letter you sent to Mr. Pasarero where you
18 represented to him that there were no
19 agreements with Cisco Murphy, what you're
20 telling the Court now is what you meant to say
21 with that I didn't enter into an agreement
22 with Mr. Cabeza -- on the Cabeza trial with
23 Mr. Murphy, not that there were no agreements
24 in existence; right?

25 A. There clearly were agreements in

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1 existence.

2 Q. Now there were agreements in existence
3 for three trials of Jeffrey Marshall --

4 THE COURT: Can I ask this -- could
5 you stop for a minute? I listened to Murphy
6 here, who was here yesterday and he struck me
7 as a pretty shrewd piece of work.

8 THE WITNESS: I had a very limited --

9 THE COURT: I mean, he struck me as
10 basically, you know, no fool.

11 THE WITNESS: I would say that's
12 correct, Judge.

13 THE COURT: And it -- I'm not making
14 any judgments now about the ultimate outcome
15 but it strikes me that the notion that he
16 wouldn't ask for anything, that he would
17 affirmatively say that he didn't want anything
18 strikes me as being almost totally
19 inconsistent with his personality.

20 THE WITNESS: Judge, he asked for
21 nothing.

22 THE COURT: No, I know but --

23 THE WITNESS: I asked him -- no, let
24 me just finish.

25 THE COURT: But the question I asked

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1 you was --

2 THE WITNESS: Okay.

3 THE COURT: -- did he say I don't want
4 anything or did he just simply ask for nothing
5 and you, as I -- if I heard your answer
6 correctly, you specifically said that he said
7 that he didn't want anything and it's sort of
8 hard for me to believe that someone like
9 Ciscro Murphy, the person I saw here testify,
10 would have said I don't want anything.

11 THE WITNESS: Judge, I will answer it
12 again. I asked him, "What are you looking
13 for?"

14 He said, "I am looking for nothing. I
15 am pissed off at Marshall," or Born or
16 whatever he called him, because of what he had
17 -- he felt that Marshall had done to him.

18 The reason, Judge, I am so clear and I
19 remember this is how -- it hasn't happened
20 very often in my career.

21 THE COURT: Well, no, that doesn't
22 happen often.

23 THE WITNESS: In fact, I don't think
24 it's happened at all other than this.

25 MR. BARKET: May I continue, Judge?

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1 BY MR. BARKET:

2 Q. Now, Mr. Murphy after the deal was
3 signed, testified in two trials for your
4 office.

5 Is that correct, the two murder cases?

6 A. I know that based upon --

7 Q. Mr. Hollman --

8 A. -- information -- yes, I wasn't
9 present at the trials; yes.

10 Q. And you also got a letter from
11 Mr. Pasarero, who was going to use Mr. Murphy
12 in a third trial in Nassau County.

13 Is that correct?

14 A. I don't know that he was going to use
15 him. I don't have any information about that.

16 Q. Didn't he write to you asking for the
17 agreements? When I say you, it's Mr. Hollman,
18 asking for the agreements?

19 A. Yes.

20 Q. Including Mr. Murphy's agreement?

21 A. That has nothing to do with him -- his
22 desire or his plan to use him.

23 Q. And so during those three trials,
24 subsequent to signing of the agreement, was
25 that agreement disclosed by you or your office

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1 to anyone?

2 A. What three trials?

3 Q. The two involving your office, the
4 murder case that Mr. Hollman tried and the
5 third with Mr. Pasarero?

6 A. The only one I could speak to is the
7 one that took place before the one that I
8 tried. I had no agreement and, therefore, of
9 course, nothing was turned over because there
10 was no agreement.

11 What happened in the latter two trials
12 and the trial in Nassau County, I have no
13 information.

14 Q. And the only public notation -- excuse
15 me, withdrawn.

16 The only written statement you make
17 about the agreement is a letter to
18 Mr. Pasarero saying it doesn't exist.

19 Is that right?

20 A. I don't know what you're asking me.
21 There was no agreement to give to him.
22 Nothing existed with regard to the Cabeza
23 case.

24 Q. When Mr. Pasarero asked you for any
25 agreements your office has with Cisco

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1 Murphy --

2 MS. DONHAUSER: Judge, we've gone over
3 this --

4 A. Mr. Barket, I answered that question
5 already.

6 MS. DONHAUSER: -- I don't know how
7 many times.

8 THE COURT: We're going over -- this
9 has been asked and answered.

10 Q. When Mr. Murphy testified in the trial
11 before Judge Aiello, the Cabeza trial --

12 A. Yes.

13 Q. -- you indicated that he said that he
14 -- the second crime was assaulting some girl.

15 Is that correct?

16 A. If you show me the minutes, I can give
17 you the exact quote. I don't recall but I
18 believe that that's the way he always
19 characterized it.

20 Q. Did you stand up --

21 A. As a sexual assault or an assault on a
22 woman.

23 Q. Did you stand up and correct him and
24 say to the judge either on or off the record,
25 Judge, that's not an assault, that's a rape?

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1 A. He was being cross-examined by
2 Mr. Harrison and Mr. Harrison had the rap
3 sheet in front of him. I was going to
4 interrupt his cross-examination and have --
5 and correct the witness? I believe that
6 Mr. Harrison had the right to cross-examine
7 him.

8 And if he characterized it as an
9 assault, as opposed to a rape, that's a very
10 good piece of cross-examination material.
11 So --

12 Q. What do you mean that's a very good
13 piece of cross-examination material?

14 A. Well, if he's characterizing it one
15 way and the rap sheet says something else, it
16 would be up to Harrison then to, I would
17 assume, cross-examine him with it.

18 Q. When you say --

19 A. That would be --

20 Q. -- a very good piece, that would be
21 something as a defense attorney that would be
22 -- make a lot of hay with, wouldn't you, to be
23 able to say, it's not assault, it's a rape.
24 And you would go into that.

25 A. Yes.

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1 Q. Becuase the person just lied to the
2 Court.

3 A. Becuase the person mischaracterized or
4 characterized it in his own way; yes.

5 Q. But there was some testimony you gave
6 on cross, I guess, or the examination by the
7 attorneys in your office, there was a
8 conference at the bench or was that between
9 you and Mr. Harrison and the Court prior to
10 Murphy's testimony?

11 A. Yes.

12 Q. Was that on the record or off the
13 record?

14 A. Off the record.

15 THE COURT: And what was -- tell me
16 what was the substance of the conversation off
17 the record?

18 THE WITNESS: We went to the bench and
19 I told the judge that I was going to use --
20 that I had made up my mind that I was going to
21 use him or that he was right outside but that
22 his lawyer wasn't there.

23 And as I said to you, Judge, it was
24 very late in the day. It may have even been
25 close to 4:30 and Judge Aiello wanted to

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1 conclude the case becuae he knew that except
2 for, I believe, a sur rebuttal witness that
3 Harrison may was -- may have wanted to call,
4 that was going to be the end of the trial and
5 he was anxious to get it over with.

6 And he said in so many words, don't
7 worry about that. I'll protect him. You're
8 not going -- I'm not going to allow either of
9 you to go into his underlying -- the
10 underlying facts of his cases.

11 Q. Did Mr. Harrison complain that he
12 wasn't given notice of the alibi rebuttal
13 witness during that conference?

14 A. Not to my knowledge.

15 THE COURT: Is there a rule that
16 requires such notice?

17 MR. BARKET: Yes, Judge.

18 THE WITNESS: Yes, but I had case law,
19 Judge, that I believe would have taken care of
20 it in the event that that was raised.

21 BY MR. BARKET:

22 Q. Now when did you first tell
23 Mr. Harrison that Murphy was going to be
24 called, was it that day?

25 A. That -- to use the name Murphy or that

Vecchione - Redirect - Barket

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1 I was going to --

2 Q. Yes, no to use the name Murphy. You
3 told him that Cisco Murphy would, you know --

4 A. When I called him and I said the
5 people call Cisco Murphy.

6 Q. So, Mr. Harrison -- the information he
7 has on Mr. Murphy came exclusively from you.

8 Is that right?

9 A. No.

10 Q. Well --

11 A. No, Mr. Harrison -- he worked for
12 Mr. Harrison. He worked for Mr. Harrison. He
13 worked for Mr. Marshall at Mr. Harrison's
14 office. So, Mr. Harrison knew a great deal
15 about Mr. Murphy.

16 Q. My question --

17 A. He knew an awful lot about Mr. Murphy.

18 Q. Did the judge give Mr. Harrison time
19 to go pull Mr. Murphy's criminal files prior
20 to his testimony?

21 A. I don't recall that. I don't think
22 Mr. Harrison asked for that.

23 MR. BARKET: That's all I have, Judge.
24 Thank you.

25 RECROSS-EXAMINATION

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1 BY MR. DEMARTINI:

2 Q. The document that counsel is showing
3 you, the one with the notes, if you could look
4 at the note that's stapled on the back.

5 Does that have to do with the sex
6 crimes case?

7 A. Excuse me, yes.

8 Q. And does it, in fact, tell you an
9 indictment number for the sex crimes case?

10 A. Yes.

11 Q. So, looking at that note, would that
12 refresh your recollection as to whether or not
13 at some point prior to March 17 when you tried
14 the case and put --

15 MR. BARKET: I'm sorry, can you -- I
16 just want to be able to see what note he's
17 referring to?

18 MS. DONHAUSER: It's the --

19 MR. BARKET: He's looking at --

20 MS. DONHAUSER: It's this. This is
21 the statement piece on the flip side of what
22 you were showing him. You were showing this.

23 MR. BARKET: Okay.

24 MS. DONHAUSER: He's showing the
25 opposite side --

Vecchione - Recross - Demartini

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1 MR. BARKET: Okay.

2 MS. DONHAUSER: -- which was this and
3 there's a statement.

4 Q. Does that note on the back of the
5 yellow pad or the sheet coming from the yellow
6 pad refresh your recollection as to whether or
7 not you would have had the sex crimes case
8 pulled at some time prior to the March 17 date
9 upon which Murphy testified in the Cabeza
10 trial?

11 A. I didn't need my recollection
12 refreshed but yes, I did pull it before and I
13 did know that there was a rape charge; yes.

14 Q. And, in fact, that refers to the rape
15 charge.

16 A. Yes, it does.

17 Q. And --

18 A. In fact, these are my -- this part is
19 my handwriting where I have ROR, which means
20 released on his own recognizance because
21 that's what had happened as a result of the
22 people not being ready on the rape case.

23 Q. That was before the indictment?

24 A. That was before the indictment.

25 Q. After he was arraigned on the

Vecchione - Recross - Demartini

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1 complaint.

2 A. That's correct.

3 Q. And then that also indicates that
4 subsequently there was an indictment?

5 A. Yes, the indictment number is on here.

6 Q. And I would just show you page 11 and
7 I believe all of this is -- will be in the
8 record, 1179 of Murphy's testimony in the
9 Cabeza trial.

10 A. Okay.

11 Q. Does that page indicate what Murphy's
12 response was as to his second pending case?
13 Did he merely say it was an assault or did he
14 say it was more than that?

15 A. He says -- the question is:

16 "Question: You have two charges.

17 "Answer: Yes."

18 I'm sorry, the question is:

19 "Question: And you have two charges;
20 yes?

21 "Answer: Possession of a weapon in
22 the second -- in the first, I mean."

23 Then the Court interrupts and the
24 Court says:

25 "The Court: You said there were two

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1 cases pending; two separate cases?

2 "Answer: Yes.

3 "The Court: One is for a weapon and
4 what's the other one?

5 "Answer: Supposed to be assaulting
6 this girl.

7 "The Court: One for assault, one for
8 a weapon? Go ahead."

9 Q.. But Mr. Murphy's response was it's
10 supposed to be assaulting this girl?

11 A. Correct.

12 Q. When he spoke to you about his open
13 case, the rape case, how did he characterize
14 it?

15 A. Similar.

16 Q. As assaulting a girl?

17 A. Yes.

18 MR. DEMARTINI: I have no further
19 questions, your Honor.

20 REDIRECT EXAMINATION

21 BY MR. BARKER:

22 Q. Did he talk to you about his pending
23 cases without Mr. Fiol being present?

24 A. No.

25 MR. BARKET: Nothing further.

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1 RECROSS EXAMINATION

2 BY MR. DEMARTINI:

3 Q. When you say no, do you mean the
4 underlying facts? He told you what he was
5 charged with.

6 A. Oh, he told me what he was charged
7 with but that's not what I took that from -- I
8 took from the question was the underlying
9 facts. I did not go into those with him.

10 Q. Okay.

11 REDIRECT EXAMINATION

12 BY MR. BARKET:

13 Q. So, he never told you then -- excuse
14 me, Judge -- he never told you then about the
15 gun, how he got beat up, how the gun wasn't
16 really his, how Jeffrey Marshall planted the
17 gun on him?

18 A. He was --

19 Q. He didn't go into that --

20 A. That --

21 Q. He didn't give you the defense for the
22 gun charge?

23 A. No, I don't really remember that. I
24 just -- I really don't remember. I know I
25 didn't go into the facts with him.

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1 MR. BARKET: Thank you. Nothing else,
2 Judge.

3 THE COURT: Wait, I don't understand
4 that because he's giving you an explanation
5 for why he's coming into talk and for why he
6 wants to cooperate against Murphy.

7 THE WITNESS: Correct, Judge.

8 THE COURT: So that explanation --

9 THE WITNESS: No, but I --

10 THE COURT: -- would have had to have
11 included some discussion that --

12 THE WITNESS: He said that Jeffrey
13 Marshall tried to plant some -- plant a gun on
14 him, yes, but I never made the connection
15 between -- with any definitiveness at that
16 point, between the connection with -- between
17 the gun that he says he had on him and the gun
18 that he says Marshall wanted to try to plant
19 on him.

20 THE COURT: Okay.

21 THE WITNESS: That's what I meant.

22 THE COURT: Any other questions?

23 MR. BARKET: No, your Honor.

24 THE COURT: Thank you.

25 THE WITNESS: Thank you.

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1 MR. BARKET: Could I just see --

2 THE COURT: Do you want him to leave?

3 He's leaving. Do you want him for a minute?

4 MR. BARKET: Just one second. There's
5 one thing I wanted to check.

6 Yes, there a couple of more questions.
7 I'm sorry.

8 THE COURT: Could you come back for a
9 minute?

10 MR. BARKET: I just remembered
11 something.

12 BY MR. BARKET:

13 Q. Now your testimony is that and I'm
14 referring now to Petitioner's 3, that what you
15 told Mr. Murphy before he testified in the
16 Cabeza trial were words to the effect of to go
17 in there and tell the Court what you know.

18 Is that right?

19 A. Yes.

20 Q. Now, Judge, I -- and then after that
21 happened, your bureau, you and Mr. Courtney,
22 there's a notation in the rape case that you
23 wanted to deal the rape case and the gun case.

24 Is that right?

25 MS. DONHAUSER: What are you --

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1 MR. BARKET: Yes.

2 MS. DONHAUSER: What information are
3 you --

4 MR. BARKET: That's number 14, I
5 believe.

6 MS. DONHAUSER: Yes, can you tell us
7 what the page they are?

8 MR. BARKET: It's the -- can I
9 approach, Judge.

10 MS. DONHAUSER: Oh, the note; yes.

11 MR. BARKET: Do you know what I am
12 referring to?

13 MS. DONHAUSER: It's the separate
14 note?

15 MR. BARKET: April 14 date.

16 MS. DONHAUSER: Yes.

17 Q. Do you remember seeing that?

18 A. I don't know whose note that is. Yes,
19 I remember you showing it to me.

20 Q. And ultimately what you did is you did
21 consolidate those two cases and you disposed
22 of it.

23 Is that right?

24 A. That's what happened; yes.

25 Q. So, if Mr. Murphy had said to me at

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1 the Franklin Correctional Facility, I mean,
2 he, referring to you, didn't say that in
3 direct words but he said testify, give us all
4 the information you've got, he said he'll talk
5 to the other people to consolidate it before
6 the Cabeza trial, would that statement be
7 accurate?

8 A. No.

9 MR. BARKET: Nothing further, Judge.

10 THE COURT: All right?

11 MR. DEMARTINI: Nothing.

12 MS. DONHAUSER: Nothing further.

13 THE COURT: Do you want to come up?

14 Can I ask you, I just want to
15 understand your theory, what is the theory
16 behind the argument that he failed to disclose
17 -- let's assume he failed to disclose this
18 agreement to Dan Hollman --

19 MR. BARKET: It would be --

20 THE COURT: -- and he failed to
21 disclose it to the Nassau County District
22 Attorney, and he did that because?

23 MR. BARKET: He did that, Judge,
24 because he didn't disclose it in the Cabeza
25 trial and he had a secret agreement with

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1 Murphy. Either Murphy didn't want to be known
2 as a rat while he was in jail, which seems
3 obvious from his testimony or he, for reasons
4 that I think are obvious now, that he didn't
5 want the agreement to be known because
6 Murphy's testimony would be devastated with
7 the agreement.

8 I mean, Murphy is a jailhouse
9 informant, nothing more. He says Marshall
10 told me this. That's what makes him useful.
11 If he gets a huge benefit, which he did, for
12 that testimony and people know that his
13 motivation for testifying is not because
14 Marshall --

15 THE COURT: I understand that.

16 MR. BARKET: -- beat him up and did
17 all that stuff --

18 THE COURT: I understand.

19 MR. BARKET: -- it devastates his
20 testimony.

21 THE COURT: I understand the impact
22 that it has on his testimony if there's an
23 agreement. That's not my question.

24 My question is what is the -- he
25 didn't -- let's assume that Dan Hollman's

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1 testimony is more accurate. He didn't
2 disclose to Dan Hollman the existence of the
3 plea agreement, as Hollman was beginning to
4 try the case and he didn't disclose it to the
5 Nassau County District Attorney, even though
6 arguably, the letter clearly requested it --
7 not arguably, it clearly requested it, why
8 would he not disclose it in -- for reasons
9 that are relevant to this trial -- to this
10 hearing right now?

11 MR. BARKET: In other words, why is it
12 relevant here?

13 THE COURT: Right.

14 MR. BARKET: There's the --

15 THE COURT: In other words, I
16 understand that if it was disclosed in either
17 of the proceedings, it would have effected the
18 credibility of Ciscro Murphy --

19 MR. BARKET: I understand the
20 question, Judge.

21 THE COURT: -- on all three trials,
22 so --

23 MR. BARKET: The short answer is and
24 the best analogy I can give you, it's a 404(b)
25 argument, that this is the agreement that

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1 we're dealing with here and for reasons that
2 we -- that seem obvious, that this man,
3 Vecchione, deliberately concealed this
4 agreement apparently from people in his own
5 office, affirmatively lied about it to a
6 district attorney in Nassau County when he was
7 asked that.

8 THE COURT: Well, what -- I am asking
9 you what motive is as it effects this
10 particular case?

11 MR. BARKET: Becuase it then past --
12 it goes to his intent, absence of mistake, and
13 obviously his credibility. When he's telling
14 the Court there wasn't an agreement before the
15 Cabeza trial, we -- and if there was, I would
16 have disclosed it, which is essentially the
17 purpose of putting in all the other
18 agreements, we know that's not true as it
19 relates to Murphy becuae we know that with
20 Murphy's cooperation agreement, for whatever
21 reason, he consciously decided not to disclose
22 it repeatedly.

23 So that the fact that he didn't
24 disclose it in the subsequent, I would say,
25 three trials, two in Brooklyn and one in

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1 Nassau, tells you that he would not have
2 disclosed it on the 17th.

3 It was his mode of operation, if you
4 will, as it relates to Murphy and Marshall.
5 And the reason for his doing that is, I see, I
6 would believe, is that he knows that it would
7 destroy and not only his -- look, ordinarily
8 you have a cooperating witness who says I'm
9 getting a deal and this is what happened. And
10 it's kind of, you know -- in this instance,
11 Murphy's entire testimony, what makes it
12 credible, if it's credible at all, is his
13 motivation for coming in.

14 He essentially says, you know, this is
15 me and Marshall and this is what happened.
16 Once we find out that he's got a huge benefit
17 for that, saved himself a decade in jail, his
18 -- the core of his testimony is destroyed.
19 You can't reveal it.

20 And I believe what happened, Judge, is
21 it --

22 THE COURT: So, is it that he was
23 afraid that if he disclosed the agreement
24 which on its face, the written agreement
25 operated prospectively, it would raise

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1 questions about what actually happened at the
2 first trial.

3 Is that it?

4 MR. BARKET: I think that was part of
5 it, Judge, but I also think his motivation was
6 to not to have that disclosed because it would
7 ruin Murphy's credibility in the prospective
8 trials. That if the agreement was disclosed
9 -- in other words, he has a decision to make
10 for himself every time he has an agreement.
11 Do I disclose it or don't I disclose it?

12 And this man, for whatever reason,
13 consciously decided not to disclose it,
14 repeatedly. And we have --

15 THE COURT: No, but you keep going
16 over it. I'm asking about --

17 MR. DEMARTINI: Your Honor, there's a
18 flaw in that argument.

19 THE COURT: I'm asking about it --

20 MR. BARKET: So --

21 THE COURT: I think you've answered
22 it. I was just -- I'm asking about it's
23 relevance. I understand your argument, its
24 propensity. If he didn't disclose it --

25 MR. BARKET: Well, essentially --

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1 THE COURT: -- you know, in the
2 subsequent three times --

3 MR. BARKET: And it shows a
4 willingness for him to do exactly that which
5 we've accused him of doing, which is
6 concealing the agreement and keep in mind that
7 what he did behind Mr. Fiol's back was
8 reprehensible for other reasons.

9 THE COURT: Well, we don't have to get
10 into that --

11 MR. BARKET: No.

12 THE COURT: -- because I don't --

13 MR. BARKET: But it goes --

14 THE COURT: -- grant habeas corpus
15 relief on that ground.

16 MR. BARKET: -- to his motivation. He
17 needs Murphy. It's obvious from the orders to
18 produce that he wanted Murphy, that he knew he
19 was going to call Murphy as a witness, that he
20 needed Murphy to put this testimony in against
21 Jeffrey Marshall.

22 And he has a problem because Fiol
23 won't let him. Fiol is saying I want a better
24 deal for my client.

25 THE COURT: Well, I don't know about

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1 Fiol.

2 MR. DEMARTINI: We haven't heard --

3 MS. DONHAUSER: We haven't heard from

4 Fiol.

5 MR. BARKET: Well, but -- your Honor,
6 that's --

7 THE COURT: It remains to be -- hear
8 from Fiol.

9 MR. BARKET: That -- and then after
10 that happens, he makes the deal and it can't
11 -- I mean, I am sure that factored into his
12 mind in not disclosing it during -- in the
13 future trials.

14 MR. DEMARTINI: Your Honor, the flaw
15 in that argument is if he really doesn't want
16 the deal disclosed, so that he's not going to
17 tell Hollman, then Mr. Vecchione's going to go
18 over, take that plea and get the file sealed.
19 He's not going to leave copies of this thing
20 in every Ciscro Murphy file and in the Court
21 file where Mr. Barket found it.

22 MR. BARKET: Actually, it was --

23 MS. DONHAUSER: No.

24 MR. BARKET: -- clearly a mistake. We
25 all know that normally when these deals are

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1 done, the files are sealed, the cooperation
2 agreements are not --

3 MR. DEMARTINI: But it wasn't.

4 MR. BARKET: Yes, because he wasn't
5 there. He wasn't there.

6 MR. DEMARTINI: But if he is so eager
7 to have this kept secret, then he's going to
8 be there.

9 MR. BARKET: Well, he probably told
10 somebody to do it. He assumed it wouldn't be
11 put in there.

12 MS. DONHAUSER: That's a --

13 MR. BARKET: It was a mistake.

14 MR. DEMARTINI: Yes, that --

15 MS. DONHAUSER: No, that's a -- it was
16 just some --

17 MR. BARKET: It was sheer luck --

18 MS. DONHAUSER: Absolutely not.

19 MR. BARKET: -- that I found that;
20 sheer luck that I found that.

21 MS. DONHAUSER: Sheer luck. I would
22 think as a good attorney you would go look and
23 you did.

24 MR. DEMARTINI: And I think the sad
25 thing here is that Mr. Hollman was not a good

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1 attorney when he was trying the Marshall
2 cases. I mean, every time I try a case and I
3 believe every time Mr. Barket tried a case as
4 a prosecutor and you too, your Honor, you
5 pulled the files of your witnesses who have
6 criminal records. Mr. Hollman didn't bother.
7 The agreement definitely was there.

8 MR. BARKET: The answer is the letter
9 to Mr. Pasarero where another prosecutor
10 trying Jeffrey Marshall asks him for the very
11 thing that is in dispute now and he lies to
12 him. He says it doesn't exist.

13 MR. DEMARTINI: It's two years later
14 and he is sloppy, you know?

15 MR. BARKET: How could --

16 MR. DEMARTINI: What am I going to do?

17 MR. BARKET: Two years later and he's
18 sloppy?

19 And, Judge, the perspective on this is
20 Marshall was not some miscellaneous person
21 charged with some small offense. He's an
22 individual that sat through four -- three
23 murder trials in Brooklyn and the attempted
24 murder of a retired police officer and another
25 money courier in Nassau County in two years.

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1 THE COURT: And did he -- was he asked
2 -- again, refresh my recollection, I know I
3 read it before but was he asked whether he had
4 any deals in those subsequent cases?

5 MR. DEMARTINI: He didn't testify --

6 MR. BARKET: Murphy --

7 MR. DEMARTINI: -- in Nassau County.

8 MR. BARKET: No, he --

9 THE COURT: No, in the subsequent two
10 in Brooklyn?

11 MR. DEMARTINI: And he wasn't asked in
12 the second homicide --

13 MS. DONHAUSER: No, the --

14 MR. DEMARTINI: -- or the second
15 Hollman trial.

16 MS. DONHAUSER: In the second Hollman
17 trial he wasn't asked and in the first Hollman
18 trial, he was asked. We went through that
19 testimony yesterday and he replied that he did
20 not.

21 And that's, I think -- I believe
22 that's when your Honor sort of discussed at
23 length with him his response to that.

24 Now, I think what's significant here,
25 too, is obviously, Cisco Murphy's attorney,

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1 Juan Fiol -- Mr. Fiol signed the agreement.
2 He could have spoken to people about the
3 agreement.

4 Cisco Murphy himself, when Dan
5 Hollman asked that question, he could have
6 said something about the agreement. Now, he
7 didn't. It seems that Mr. Hollman was unaware
8 of the agreement but, you know, that's
9 assuming that Mr. Vecchione, after the written
10 agreement was signed in court when he wasn't
11 even in court, that somehow something was
12 conveyed to Cisco Murphy by either Cisco
13 Murphy's attorney or somehow was conveyed to
14 Cisco Murphy that he shouldn't tell anybody
15 about the written agreement. I mean, it's --

16 THE COURT: Well, we have to hear
17 from Mr. Fiol about what was going on.

18 MR. BARKET: You have opportunity
19 after opportunity to disclose it. When no
20 questions are asked, they're silent.

21 MS. DONHAUSER: We're talking about
22 two agreements.

23 MR. BARKET: When --

24 MS. DONHAUSER: We're talking about
25 the signed --

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1 MR. BARKET: No, we're not --

2 MS. DONHAUSER: -- written agreement.

3 MR. BARKET: We're not.

4 MS. DONHAUSER: And your --

5 MR. BARKET: We're not.

6 MS. DONHAUSER: You had never made the
7 position that the signed written agreement was
8 a signed written agreement before the Cabeza
9 trial.

10 MR. BARKET: No.

11 MS. DONHAUSER: Obviously, it was --

12 MR. BARKET: At every point they had
13 to disclose the Murphy deal. If they were
14 asked, they lied about it and if they weren't
15 asked, they remained silent. And it didn't
16 happen once, it happened repeatedly.

17 And it didn't only happen with respect
18 to the agreement, Judge. They did this and
19 you'll see the letters while they're writing
20 letter after letter to the parole board and to
21 the temporary release program recommending
22 that this man be released and Murphy's writing
23 them back thanking them for all the letters
24 they're writing for him.

25 MS. DONHAUSER: The person that is

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1 writing those letters is Dan Hollman --

2 MR. BARKET: And --

3 MS. DONHAUSER: -- and you heard him
4 on the stand --

5 MR. BARKET: And --

6 MS. DONHAUSER: -- yesterday --

7 MR. BARKET: And --

8 MS. DONHAUSER: -- he claimed that he
9 didn't say --

10 MR. BARKET: And Vecchione.

11 MS. DONHAUSER: -- that it was
12 necessary to reply to that.

13 MR. BARKET: And --

14 MR. DEMARTINI: Right, Mr. Vecchione.
15 But the parole letter that Michael Vecchione
16 wrote on July 6, 1993, was he put that in the
17 file, in the Marshall file --

18 MS. DONHAUSER: It was in the Marshall
19 file.

20 MR. DEMARTINI: -- and Hollman turned
21 it over.

22 MS. DONHAUSER: And Hollman turned it
23 over to Mr. Harrison --

24 MR. DEMARTINI: And it's a -- you
25 know, so it's crazy --

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1 MS. DONHAUSER: -- at the second
2 trial.

3 MR. DEMARTINI: -- that if you don't
4 want nay of this going in, he's going to leave
5 it there.

6 MR. BARKET: He didn't turn it over.

7 MR. DEMARTINI: Yes.

8 MS. DONHAUSER: He --

9 MR. BARKET: Murphy was asked about
10 it. That's how he got it.

11 MS. DONHAUSER: Absolutely not and we
12 can put into evidence the fact that it was
13 turned over.

14 MR. BARKET: Hollman asked Murphy, any
15 deals or any promises whatsoever and Murphy
16 lies and says no.

17 MS. DONHAUSER: And then --

18 MR. DEMARTINI: The first question on
19 cross --

20 MS. DONHAUSER: -- Harrison's question
21 is --

22 MR. DEMARTINI: -- is what?

23 MR. BARKET: Why don't you guys go
24 back and reopen Murphy's deal because he
25 purged himself in that trial.

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1 MS. DONHAUSER: We can --

2 MR. BARKET: He purged himself in a
3 murder trial.

4 MS. DONHAUSER: We can recall Dan
5 Hollman and put into evidence the fact that he
6 disclosed --

7 MR. DEMARTINI: He turned over the
8 parole letter --

9 MS. DONHAUSER: -- in fact, we did
10 that yesterday.

11 MR. DEMARTINI: And that was the first
12 question on cross.

13 MS. DONHAUSER: And it's part of
14 Rosario. It's the part of the Rosario -- it's
15 a signed Rosario, signed received by
16 Mr. Harrison --

17 MR. BARKET: How did he get the parole
18 order and not the written agreement?

19 MS. DONHAUSER: -- the fact that there
20 is a July 6, 1993 --

21 MR. BARKET: How did he get the parole
22 agreement letter and not the agreement?

23 MR. DEMARTINI: Because the parole --

24 MR. BARKET: They're on the same day.

25 MR. DEMARTINI: The parole letter was

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1 put --

2 MS. DONHAUSER: The letter was
3 signed --

4 THE COURT: Let him answer it.

5 MS. DONHAUSER: The letter was signed
6 July 6, 1993.

7 MR. DEMARTINI: The parole letter --

8 MR. BARKET: So was the agreement.

9 THE COURT: If I can answer. I can
10 answer.

11 MS. DONHAUSER: It was signed August
12 1993.

13 THE COURT: Please, I can't -- there's
14 no point in me listening.

15 MR. DEMARTINI: Just to answer that
16 one question, the parole letter was put in the
17 Cabeza file. All of the agreements went over
18 to court because they had to be signed by
19 Mr. Murphy and his attorney.

20 MS. DONHAUSER: And they were executed
21 on August --

22 MR. DEMARTINI: And they then were put
23 into Murphy's file.

24 MS. DONHAUSER: -- 13, 1993.

25 MR. DEMARTINI: Where we found them

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1 and in the court Murphy file where you found
2 them.

3 THE COURT: I will see you on October
4 (sic) 23.

5 MR. BARKET: I'm sorry, Judge?

6 THE COURT: I'll see you on the 23 of
7 August. I am sorry.

8 MS. DONHAUSER: Excuse me?

9 MR. DEMARTINI: August 23 at 2 p.m.?

10 MS. DONHAUSER: We're --

11 MR. BARKET: For Mr. Fiol?

12 THE COURT: For Mr. Fiol.

13 MS. DONHAUSER: We're not available on
14 that date, your Honor. I am sorry. Both of
15 us -- both Mr. Demartini and myself have
16 longstanding plans for vacation. I have over
17 eleven weeks of vacation due.

18 MR. BARKET: When are you coming back?

19 MS. DONHAUSER: After Labor Day.

20 MR. DEMARTINI: Now do you want us
21 here on that return date in early August when
22 Legal Aid is supposed to present their
23 position with respect to --

24 THE COURT: I don't -- I gave them
25 until them --

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1 MR. DEMARTINI: All right.

2 THE COURT: -- to tell me what their
3 position is going to be.

4 MR. DEMARTINI: Okay.

5 THE COURT: I don't expect them to be
6 here.

7 MR. DEMARTINI: Okay. So, they'll
8 just be communicating with you.

9 THE COURT: I would assume they'll be
10 communicating with --

11 THE CLERK: We can continue on
12 September 5. Thursday, September 5.

13 MR. BARKET: That's a Thursday.
14 That's fine.

15 MS. DONHAUSER: Thursday, September 5,
16 that's fine. 11 o'clock or 1 p.m.?

17 MR. BARKET: 11 o'clock and we'll make
18 arrangements for Mr. Marshall to come back
19 down? He won't be held here all this time.

20 THE COURT: No, he's not going to be
21 held here.

22 MR. DEMARTINI: No, we'll put another
23 note for that.

24 THE COURT: Unless you want to for one
25 witness, waive his appearance, otherwise we'll

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1 bring him down.

2 MR. BARKET: I --

3 MS. DONHAUSER: And it's possible
4 that, your Honor, that we will have witnesses
5 at that time.

6 THE COURT: Okay.

7 MR. BARKET: So, no, I don't think I
8 could do that.

9 THE COURT: All right.

10 So, let's not get lost in terms of
11 doing that; getting him down here.

12 MS. DONHAUSER: I'll do that this
13 time.

14 THE COURT: Okay.

15 MS. DONHAUSER: I'm sorry for the
16 confusion.

17 THE COURT: Okay.

18 Where's the writ? I have to write
19 that the writ is satisfied.

20 MR. BARKET: What was the question?

21 THE COURT: I need the writ. Don't go
22 yet.

23 (Pause in proceedings)

24 (Discussion held off the record)

25 THE COURT: Wait one second. I've got

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1 to satisfy -- I'm going to write that the writ
2 is satisfied.

3 Do you have the writ?

4 MR. DEMARTINI: I don't have the write
5 with me, Judge.

6 (Pause in proceeding)

7 THE COURT: If you don't have it,
8 we'll try and find the original.

9 (Matter concluded)

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C E R T I F I C A T E

I, ROSALIE LOMBARDI, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 5th day of August, 2002.

Rosalie Lombardi

Rosalie Lombardi
Transcription Plus II